

## § 80.19

## 44 CFR Ch. I (10–1–11 Edition)

the subject property notice of applicable land use restrictions and related procedures described in this part, consistent with FEMA model deed restriction language.

[72 FR 61743, Oct. 31, 2007, as amended at 74 FR 47481, Sept. 16, 2009]

### § 80.19 Land use and oversight.

This section applies to acquisitions for open space projects to address flood hazards. If the Administrator determines to mitigate in other circumstances, he/she will adapt the provisions of this section as appropriate.

(a) *Open space requirements.* The property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions.

(1) These uses may include: Parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; buffer zones; and other uses FEMA determines compatible with this part.

(i) Allowable uses generally do not include: Walled buildings, levees, dikes, or floodwalls, paved roads, highways, bridges, cemeteries, landfills, storage of any hazardous or toxic materials, above or below ground pumping and switching stations, above or below ground storage tanks, paved parking, off-site fill or other uses that obstruct the natural and beneficial functions of the floodplain.

(ii) In the rare circumstances where the Administrator has determined competing Federal interests were unavoidable and has analyzed floodplain impacts for compliance with § 60.3 of this subchapter or higher standards, the Administrator may find only USACE projects recognized by FEMA in 2000 and improvements to pre-existing Federal-aid transportation systems to be allowable uses.

(2) No new structures or improvements will be built on the property except as indicated below:

(i) A public facility that is open on all sides and functionally related to a designated open space or recreational use;

(ii) A public restroom; or

(iii) A structure that is compatible with open space and conserves the natural function of the floodplain, which the Administrator approves in writing before the construction of the structure begins.

(3) Any improvements on the property shall be in accordance with proper floodplain management policies and practices. Structures built on the property according to paragraph (a)(2) of this section shall be floodproofed or elevated to at least the base flood level plus 1 foot of freeboard, or greater, if required by FEMA, or if required by any State or local ordinance, and in accordance with criteria established by the Administrator.

(4) After the date of property settlement, no Federal entity or source may provide disaster assistance for any purpose with respect to the property, nor may any application for such assistance be made to any Federal entity or source.

(5) The property is not eligible for coverage under the NFIP for damage to structures on the property occurring after the date of the property settlement, except for pre-existing structures being relocated off the property as a result of the project.

(b) *Subsequent transfer.* After acquiring the property interest, the subgrantee, including successors in interest, shall convey any interest in the property only if the Regional Administrator, through the State, gives prior written approval of the transferee in accordance with this paragraph.

(1) The request by the subgrantee, through the State, to the Regional Administrator must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this section, and documentation of its status as a qualified conservation organization if applicable.

(2) The subgrantee may convey a property interest only to a public entity or to a qualified conservation organization. However, the subgrantee may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in paragraph (a), of this section, with the prior approval of the Regional Administrator, and so long as the conveyance

does not include authority to control and enforce the terms and conditions of this section.

(3) If title to the property is transferred to a public entity other than one with a conservation mission, it must be conveyed subject to a conservation easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth in this section, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

(i) The subgrantee shall convey, in accordance with this paragraph, a conservation easement to an entity other than the title holder, which shall be recorded with the deed, or

(ii) At the time of title transfer, the subgrantee shall retain such conservation easement, and record it with the deed.

(4) Conveyance of any property interest must reference and incorporate the original deed restrictions providing notice of the conditions in this section and must incorporate a provision for the property interest to revert to the subgrantee or grantee in the event that the transferee ceases to exist or loses its eligible status under this section.

(c) *Inspection.* FEMA, its representatives and assigns, including the grantee shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of this part, the property conveyance and of the grant award.

(d) *Monitoring and reporting.* Every 3 years the subgrantee (in coordination with any current successor in interest) through the grantee, shall submit to the FEMA Regional Administrator a report certifying that the subgrantee has inspected the property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of this part, the property conveyance and the grant award.

(e) *Enforcement.* The subgrantee, grantee, FEMA, and their respective representatives, successors and assigns, are responsible for taking measures to bring the property back into compliance if the property is not maintained

according to the terms of this part, the conveyance, and the grant award. The relative rights and responsibilities of FEMA, the grantee, the subgrantee, and subsequent holders of the property interest at the time of enforcement, shall include the following:

(1) The grantee will notify the subgrantee and any current holder of the property interest in writing and advise them that they have 60 days to correct the violation.

(i) If the subgrantee or any current holder of the property interest fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the grantee shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

(ii) FEMA, its representatives, and assignees may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following:

(A) Withholding FEMA mitigation awards or assistance from the State and subgrantee; and current holder of the property interest.

(B) Requiring transfer of title. The subgrantee or the current holder of the property interest shall bear the costs of bringing the property back into compliance with the terms of the grant; or

(C) Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the following parties: the grantee, the subgrantee, and their respective successors.

### Subpart D—After the Grant Requirements

#### § 80.21 Closeout requirements.

Upon closeout of the grant, the subgrantee, through the grantee, shall provide FEMA, with the following:

(a) A copy of the deed recorded for each property, demonstrating that each property approved in the original application was mitigated and that the deed restrictions recorded are consistent with the FEMA model deed restriction language to meet the requirements of this part;